

ORIGINAL

BEFORE THE  
Federal Communications Commission  
WASHINGTON, DC 20554

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In the Matter of: )

Amendment of Section 73.202(b) )

Table of Allotments, )

FM Broadcast Stations )

(Milner, Georgia) )

(Ellaville, Georgia) )

(Plains, Georgia) )

Federal Communications Commission  
Office of Secretary

MM Docket No. \_\_\_\_\_

RM - \_\_\_\_\_

To: Secretary

Attn: Deputy Chief, Media Bureau, Audio Division

**MOTION TO DENY OR DISMISS PETITION FOR RULEMAKING**

Southern Broadcasting Companies, Inc. ("Southern"), pursuant to 47 C.F.R. §1.41, hereby moves to deny or dismiss the above-referenced Petition for Rulemaking filed on July 3, 2003 by Linda A. Davidson (the "Davidson Petition"). The Davidson Petition advocates three interrelated changes to the FCC's FM Table of Allotments:<sup>1</sup> (1) the allotment of FM channel 290A to Milner, Georgia, (2) the removal of the yet-to-be auctioned Ellaville, Georgia allotment from its current FM channel 290A to channel 232A to accommodate the proposed Milner, Georgia allotment and, (3) a new allotment of Channel 290A to Plains, Georgia. Ms. Davidson only expresses interest in constructing stations for two of the three proposed allotments (Milner and Plains, Georgia). She has expressed no interest in the proposed Ellaville, Georgia allotment.

**Introduction and Summary**

Pursuant to 47 C.F.R. §1.401(e), the Commission dismisses petitions that "plainly do not warrant consideration." The Davidson Petition clearly falls into this category for three reasons.

<sup>1</sup> 47 C.F.R. §73.202(b).

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First, the proposal to change the channel allotted for Ellaville, Georgia cannot be granted because its allotment is contrary to the Commission's rules. Second, no station could be built using the new allotment proposed in the Davidson Petition for Milner, Georgia, as the Federal Aviation Administration ("FAA") is unlikely to issue a "no hazard" determination for any site within the viable site area for the channel proposed. Third, the proponent failed to indicate any interest in building a station for the proposed Ellaville, Georgia allotment<sup>2</sup> in violation of longstanding Commission policy.

In addition, the Davidson Petition is procedurally infirm because it does not conform to the clearly stated filing requirements set forth in 47 C.F.R. §1.401(b).<sup>3</sup>

As a result, the Commission should deny or dismiss the Davidson Petition, without further processing, in the interests of administrative efficiency.

### **Argument**

First, the Davidson Petition plainly does not warrant consideration because it fails to meet the basic requirement that the "transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, a minimum field strength of 70 dB above one uV/m (dBu), or 3.16 mV/m, will be provided over the entire principal community to be served." 47 C.F.R. §73.315(a). As demonstrated in the technical statement, attached hereto as Exhibit A, it would be impossible for the Ellaville, Georgia allotment proposed in the Davidson Petition to comply with this rule. The proposal would fail to provide the requisite signal to a .19 square mile inhabited area of Ellaville, Georgia. As the signal does not cover "the entire principal community," it constitutes an unequivocal violation of

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<sup>2</sup> Although it is true that a different proponent previously expressed interest in the existing Ellaville allotment, Ms. Davidson offers no evidence that the earlier proponent would still be interested in the allotment on the channel proposed in the Davidson Proposal.

<sup>3</sup> A petition for rule making must be "submitted or addressed" to the Secretary of the FCC. It was instead addressed and submitted to the Chief, Allocations Branch.

Section 73.315. In such cases, the Commission returns petitions without further processing – and it must do so here. *See Laredo, Texas*, 15 FCC Rcd 19056, 19057 (2000) (upholding return of allotment rule making petition when “there is no reason to believe” that an entire community will be covered by “a 70 dBu signal as required by Section 73.315(a)”). Section 73.315 is unequivocal – and the Commission’s response to a defective petition that violates this rule must also be unequivocal; it must be dismissed or denied, without further consideration pursuant to 47 C.F.R. §1.401(e).

Second, the only suitable site area for placement of the broadcast tower for the proposed new allotment in Milner, Georgia, would create electromagnetic interference (“EMI”) to aeronautical services. As stated in the Technical Exhibit, the only available area to serve this community of license encompasses a mere 450-acre zone. As noted in the Declaration of Mary C. Lowe (attached hereto as Exhibit B), an aeronautical consultant known both to the FCC and the FAA, the FAA will not issue a no hazard determination for operation from this 450-acre area unless a licensee commits to paying for mitigation measures. As noted in Ms. Lowe’s declaration, this commitment would necessitate replacement of 14 “localizers” at a cost of 50,000-to-70,000 dollars per unit (or \$700,000 to \$980,000 dollars in total). Without such a commitment, then, the station could not be built for want of FAA approval.

The Commission “will not allot a proposed channel absent a reasonable assurance that a transmitter site is available in which [sic] will permit a station to operate in compliance with the Commission’s technical requirements.” *Montauk, New York*, Report and Order, DA 04-284, MB Docket No. 03-155, RM-10735 (Feb. 9, 2004) at ¶5 (citing *Bayshore, New York*, 20 RR 2d 1556 (1970) and *Cresswell, Oregon*, 3 FCC Rcd 10298 (2000)). The Davidson Proposal for Milner, Georgia gives no such assurances. It fails to even acknowledge the problem – let alone make any commitment to provide the required mitigation so that it could operate from the

available area-to-locate. Given this silence, the Commission lacks a reasonable assurance that a transmitter site is available that will permit the station to operate in compliance with FCC Rules.

This omission is not surprising considering that the total population of Milner, Georgia consists of only 512 people. Given this demographic, the cost of mitigating EMI seriously undermines the economic basis of constructing a station.

In the face of such silence, underscored by economics, it is clearly infeasible to construct a station that will “meet FAA approval” – a fact that makes the proposed allotment defective. *Lafayette, Georgia*, 13 FCC Rcd 2093 at ¶5. It is also clear that “[t]here is no public interest benefit in . . . a defective allotment in the FM Table of Allotments that will not provide service to the public.” *Id.* In such cases, *Lafayette* instructs that the Commission will not allocate the proposed channel, in the first place. The Commission must, therefore, deny or dismiss the Davidson Petition to prevent the inefficient reservation of the Milner FM channel so the channel may actually be put to another use that will actually serve the public.

Third, Ms. Davidson has failed to indicate she, or anyone else, is interested in constructing a station utilizing the proposed Ellaville channel reallocation, despite clear Commission policy that “absent an expression of interest in the use of the proposed channel, it is the Commission’s general policy to refrain from making a new allotment to a community.” *Pine, Arizona*, 3 FCC Rcd 1010 (1988) at ¶3. This failure – to indicate that she is interested in using an allotment she seeks – is yet another instance in which Ms. Davidson fails to adhere to the Commission’s requirements.

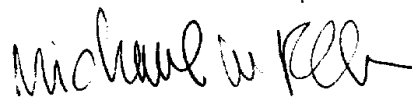
Finally, the petitioner has also failed to adhere to even the simplest and most basic procedural requirements – that she submit or address the Davidson Petition to the Commission’s Secretary. Instead, she has submitted and addressed her pleading to the chief of the Allocations Branch. This failure is part of a pattern of non-adherence to the Commission’s rules that has

been amply demonstrated by a technical proposal that blatantly violates Section 73.315 of the Commission's rules; it further militates for dismissal or denial of the Davidson Petition. The procedural rules are designed to streamline processing of the myriad papers filed with the Commission each working day. The Commission should uphold the public interest in administrative efficiency and reject such patently defective filings as the Davidson Petition. Moreover, the Commission should be able to rely on licensees, both actual and prospective, to follow simple, straightforward procedural rules. Ms. Davidson's failure here suggests that she either cannot or will not.

### **Conclusion**

For all the aforementioned reasons, Southern moves to dismiss or deny the Davidson Petition pursuant to 47 C.F.R. §1.401(e) or, at a minimum, request that the Commission return the Davidson Petition without further processing, as was done in *Laredo, TX, supra*.

Respectfully submitted,



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August 3, 2004

# **EXHIBIT A**

TECHNICAL STATEMENT  
IN SUPPORT OF OBJECTION OF  
ELLAVILLE AND MILNER, GEORGIA  
PROPOSED CHANNEL 232A ALLOTMENT

Technical Statement

The technical statement was prepared in support of an Objection to the proposed substituted allotment of Channel 232A at Ellaville, Georgia and the new allotment of Channel 290A at Milner, Georgia.<sup>1</sup> Specifically, this statement address the lack of city coverage encompassment of the 70 dBu contour from the proposed reference site for Channel 232A at Ellaville and also the small fully-spaced area-to-locate available for Milner.

Ellaville, Georgia

Figure 1 is a map showing the proposed Ellaville Channel 232A reference site and the city limits of Ellaville (according to the 2000 Census).<sup>2</sup> The 70 dBu contour, calculated assuming uniform terrain in all directions, as is

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<sup>1</sup> A Petition for Rule Making has been filed which, among other allocation changes, proposes to substitute Channel 232A for Channel 290A at Ellaville, Georgia and allocate Channel 290A to Milner.

<sup>2</sup> The proposed Channel 232A reference point for Ellaville is at 32° 16' 20" North Latitude, 84° 09' 26" West Longitude. This proposed reference site is located 10 kilometers (6 miles) away from the allocated Channel 290A Ellaville reference point.

the policy of the Allocations Branch, is also shown.<sup>3</sup> Is can be calculated that the distance from the proposed Channel 232A Ellaville reference site to the furthest point of the Ellaville city limits is 16.4 kilometers, 0.2 kilometer short of entirely encompassing Ellaville. The area not encompassed by the 70 dBu contour consists of 0.19 square kilometer (or 2 percent of the area of Ellaville) containing a population of 17 persons.

Milner, Georgia

It is also proposed to allocate Channel 290A at Milner, Georgia. Figure 2 is the area-to-locate for Channel 290A. As can be calculated, the fully-spaced area-to-locate for Channel 290A is an area consisting of only 1.8 square kilometers (or 0.7 square miles, or 450 acres).

Charles A. Cooper

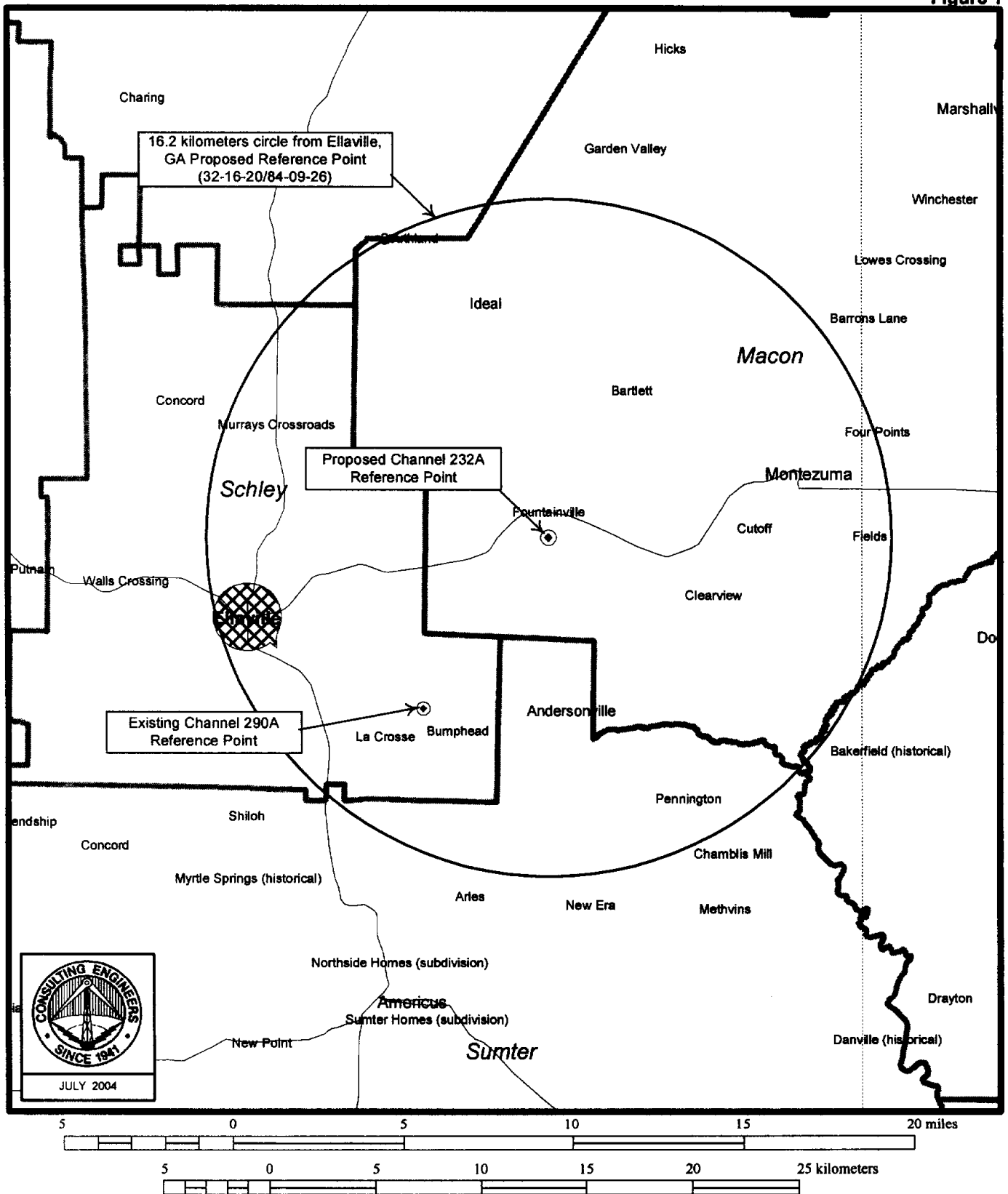
July 27, 2004

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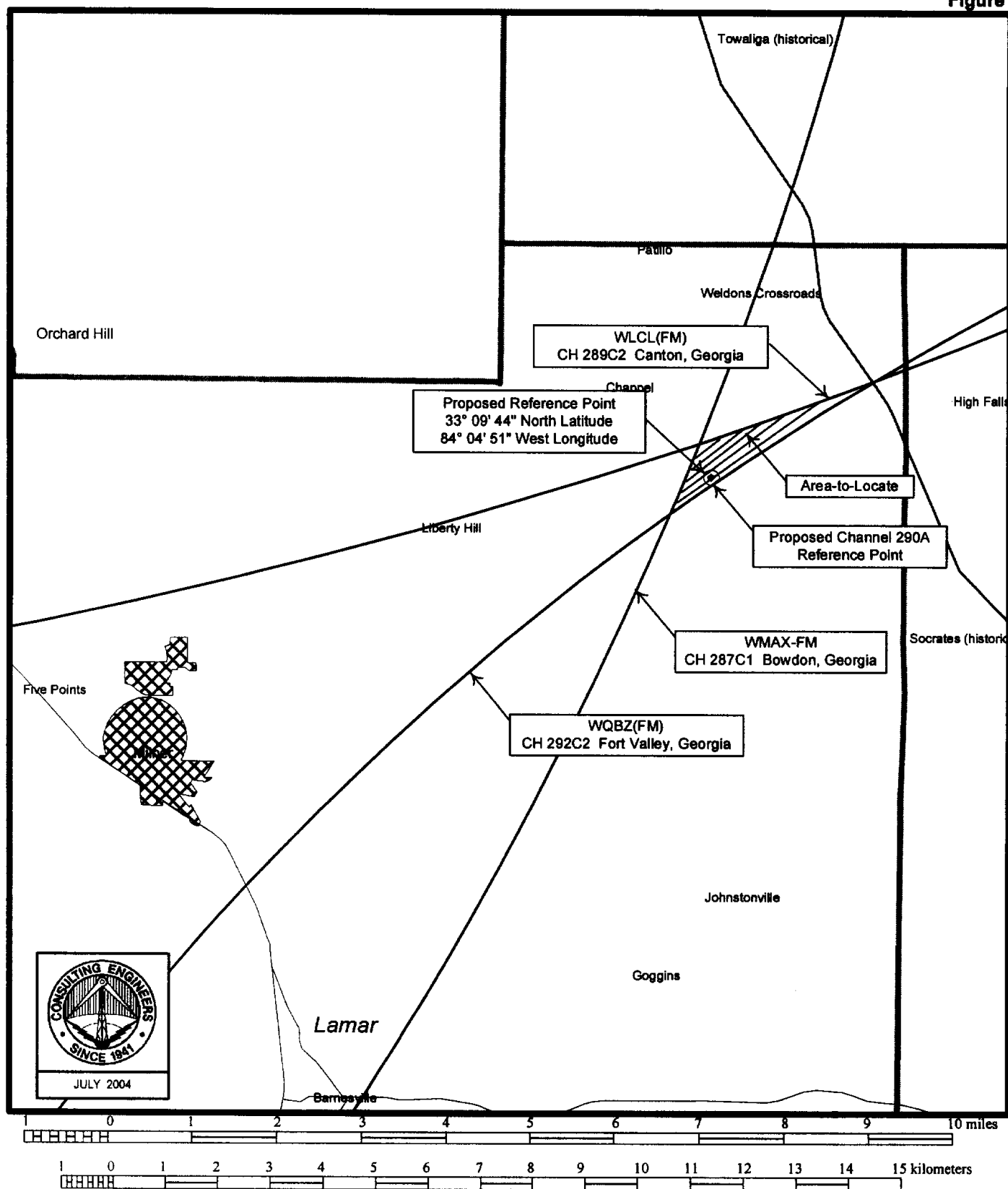
<sup>3</sup> For a maximum Class A station, the 70 dBu contour is predicted to extend radially 16.2 kilometers assuming uniform terrain. Therefore, this radius was employed to show the 70 dBu contour.

Figure 1



# **70 DBU CONTOUR FROM PROPOSED CHANNEL 232A ELLAVILLE , GEORGIA REFERENCE POINT TO PROPOSED PRINCIPAL COMMUNITY**

Figure 2



## FULLY-SPACED AREA TO LOCATE FOR PROPOSED CHANNEL 290A MILNER, GEORGIA ALLOTMENT

## **EXHIBIT B**

### DECLARATION

I, Mary C. Lowe, under penalty of perjury and pursuant to Section 1.16 of the Commission's Rules, 47 C.F.R. 1.16, hereby declare as follows:

1. I am an aeronautical consultant who has been working for the past 10 years conducting aeronautical evaluations, electromagnetic interference evaluations, Federal Aviation Administration filings and filing tower registrations with the FCC. I have completed the Federal Aviation Administration Airspace and Procedures course and the Terminal Instrument Procedure course in Oklahoma City. I am a member of the National Association of Broadcasters and the Associate Member of the Association of Federal Communications Consulting Engineers.
2. I have conducted an electromagnetic interference evaluation on a proposed site as identified on the fully spaced area to locate 290A if allotted to Milner, GA. Coordinates being 33-09-44.44 latitude and 84-04-50.69 longitude (nad 83) used by the FAA and 33-09-44 latitude 84-04-51 (nad 27) used by the FCC.
3. The evaluation disclosed that facilities at the proposed site would have potential intermodulation combinations with 14 separate FAA localizer facilities within 60 nautical miles.
4. For this proposed site to work, the proponent would have to eliminate the electromagnetic interference before the FAA would release a no hazard determination on this site. That would require changing out the localizers. The cost would be anywhere from \$50,000 to \$70,000 each. There may be one or several localizers at each airport. The localizers at the airports are for different approaches that come into the airport. When an electromagnetic study is done the signals from the localizers at the airports within sixty miles mix with our proposed frequency. In this case, 14 different localizers mix with the proposed frequency and cause interference.
5. I have filed an application with the FAA on the proposed site for its review of the electromagnetic interference. This process should take approximately 45- 60 days.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Dated this 2nd day of August, 2004.

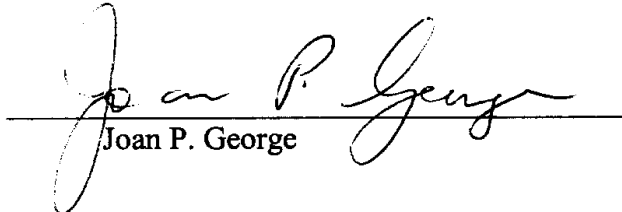
  
Mary C. Lowe

**CERTIFICATE OF SERVICE**

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the *Motion to Deny or Dismiss Petition for Rulemaking* was sent this 3<sup>rd</sup> day of August, 2004 by e-mail where indicated and via United States First Class Mail, postage prepaid, to the following:

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